

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

RIDE THE DUCKS SEATTLE, LLC,

Plaintiff,

v.

RIDE THE DUCKS INTERNATIONAL,
LLC; CHRIS HERSCHEND AND JANE
DOE HERSCHEND, individually and on
behalf of their marital community; and
HERSCHEND FAMILY
ENTERTAINMENT CORPORATION,

Defendants.

No. 19-2-20421-4

COMPLAINT FOR DAMAGES

Plaintiff alleges:

I. PARTIES

1.1 Plaintiff Ride the Ducks of Seattle, LLC (RTDS), is a limited liability company organized under the laws of the State of Washington with its principal place of business in King County, Washington. RTDS is a citizen of and resides in King County, Washington.

1.2 Defendant Ride the Ducks International, LLC (RTDI), is a limited liability company organized under the laws of the State of Missouri with its principal place of business in the State of Georgia. RTDI is a citizen of the states of Missouri and Georgia. RTDI may be liable for exemplary damages under the laws of Missouri and/or Georgia for its conduct.

COMPLAINT FOR DAMAGES - 1
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1 1.3 Defendant Chris Herschend and Jane Doe Herschend are citizens of the State of
2 Georgia, residing in Atlanta, Georgia. All acts of Chris Herschend were performed individually
3 and on behalf of his marital community. Chris Herschend may be liable for exemplary
4 damages under the laws of Missouri and/or Georgia for his conduct.

5 1.4 Defendant Herschend Family Entertainment Corporation (HFE) is a corporation
6 organized under the laws of the State of Missouri with its principal place of business in the
7 State of Georgia. HFE is a citizen of the states of Missouri and Georgia. HFE may be liable
8 for exemplary damages under the laws of Missouri and/or Georgia for its conduct.

9 II. VENUE AND JURISDICTION

10 2.1. Acts and omissions giving rise to this Complaint occurred in Seattle, King
11 County, Washington. Therefore, this Court has jurisdiction and venue with respect to the
12 parties and subject matter of this action.

13 2.2 Jurisdiction is proper because the alleged cause of action arose out of activities
14 within the State of Washington, including but not limited to the transaction of business and the
15 commission of tortious acts within this state. RCW 4.12.025 and 4.28.185.

16 2.3 Venue is proper in this Court as one or more defendants reside in King County
17 within the meaning of RCW 4.12.025.

18 III. NATURE OF ACTION AND LIABILITY

19 3.1 RTDI manufactured amphibious vehicles known as Stretch Ducks. In
20 approximately 2003–2004, RTDI experienced front axle housing failures on the Stretch Ducks,
21 and it concluded that the front axle housings contained a weak point—a defect. In response to
22 this discovery, RTDI developed a remedy. It welded a piece of metal in the known weak point
23 (the “tab”). RTDI did not, however, inform future purchasers of Stretch Ducks about the
24 defect, the tab, or the axle housing failures. It did not report the defect, the tab, or the axle
25 housing failures to government regulators, such as the National Highway Traffic Safety

1 Administration (NHTSA), as required by federal law. It did not submit to regulation by
2 NHTSA, as required by federal law. And it did not conduct a recall as required by federal law.

3 3.2 In approximately 2003–2004, HFE and Chris Herschend, a board member and
4 owner and officer of HFE, conducted due diligence prior to purchasing RTDI. HFE and Chris
5 Herschend knew or should have known about the defect in the Stretch Duck front axle
6 housings, the tab, and RTDI's failure to follow federal law.

7 3.3 In approximately 2004, HFE purchased RTDI with Chris Herschend's
8 recommendation and approval.

9 3.4 Also in approximately 2004, RTDI, with HFE and Chris Herschend's approval
10 and direction, sold Stretch Duck 6 to RTDS. Neither RTDI, HFE, or Chris Herschend
11 informed RTDS about the defect in Stretch Duck front axle housings. Over the years, RTDI,
12 Chris Herschend, and HFE sold or approved the sale of numerous Stretch Ducks to RTDS
13 without disclosure of defects, the axle housing failures experienced by RTDI, or RTDI's failure
14 to follow federal law. RTDI received 5% of the gross ticket sales from RTDS's use of Stretch
15 Ducks and distributed this revenue to Chris Herschend and HFE.

16 3.5 From 2004 to 2012, HFE wholly owned RTDI, and Chris Herschend, a board
17 member and owner and officer of HFE, was RTDI's president. HFE knew about and approved
18 of Chris Herschend's control and management of RTDI.

19 3.6 In 2012, HFE sold interest in RTDI to Chris Herschend. As president of RTDI,
20 Chris Herschend knew about the above acts and omissions of himself, RTDI, and HFE. He
21 purchased interest in RTDI and continued to serve as its president.

22 3.7 After selling RTDI, HFE continued to exercise and had the right to exercise
23 control. HFE either retained partial ownership or carried on a joint venture with Chris
24 Herschend to operate RTDI. Chris Herschend, in his capacity as RTDI's president, acted with
25 HFE's approval or in furtherance of their joint venture.

1 3.8 In 2013, RTDI experienced two more front axle housing failures. The total
2 failures experienced by RTDI from 2003–2013 represented a 10% failure rate of its
3 manufactured fleet. The axle housings that failed in 2013 had the tab remedy. RTDI
4 concluded that the tab was insufficient, but it did not consult engineers to create a new remedy.
5 It did not report the failures or the known defect to NHTSA or conduct a recall. And it did not
6 inform Stretch Duck purchasers of the failures, the defect, or the tab's insufficiency. Chris
7 Herschend is personally responsible for these acts and omissions. Further, in his capacity as
8 RTDI's president, he acted with HFE's approval or in furtherance of their joint venture. He
9 also acted on behalf of HFE as an HFE owner, board member, and officer.

10 3.9 RTDI, at Chris Herschend's direction and with HFE's approval, sent a service
11 bulletin to purchasers with a recommended modification for the front axle housing that utilized
12 specialized components fabricated and sold only by RTDI. The recommended repair was not
13 approved by engineers and would not prevent axle housing failure. Even so, the bulletin did
14 not contain enough information to complete the modification. The bulletin did not explain
15 what prompted RTDI to issue the modification. In violation of federal law, it did not explain
16 the consequences of failing to complete the modification or provide the modification free of
17 charge. Under federal law, RTDI should have conducted a recall.

18 3.10 RTDI and Chris Herschend knew that RTDS had not completed the repair
19 because RTDI did not send RTDS the parts to complete the modification. Chris Herschend
20 approved and directed RTDI staff to not provide the parts for free.

21 3.11 RTDI, Chris Herschend, and HFE's failure to notify RTDS of all known defects
22 with the Stretch Ducks it sold to RTDS, specifically including Duck 6, constitutes an error, act,
23 omission, misstatement, misleading statement, neglect, breach of duty misfeasance,
24 malfeasance and/or nonfeasance in the discharge of their duties to consumers, specifically
25 including RTDS.

1 3.12 RTDI, Chris Herschend, and HFE's failure to properly and competently
2 implement a protocol to identify defects, design effective remedies, and ensure those remedies
3 are disseminated and implemented consistent with industry standards and federal law,
4 specifically the defect that led to the accident on September 25, 2015, constitutes an error, act,
5 omission, misstatement, misleading statement, neglect, breach of duty misfeasance,
6 malfeasance and/or nonfeasance in the discharge of their duties to consumers, specifically
7 including RTDS.

8 3.13 As a result of RTDI, HFE, and Chris Herschend's conduct described in
9 paragraphs 3.11 and 3.12 above, RTDS continued operating Duck 6. While operating Duck 6
10 on September 24, 2015, Duck 6's left front axle housing failed, causing an accident with
11 numerous injuries and deaths. In the aftermath, RTDS has suffered harm to its business and
12 property.

13 3.14 RTDI, Chris Herschend, and HFE's conduct described in paragraphs 3.11 and
14 3.12 were unfair or deceptive acts or practices that violated Washington's consumer protection
15 act. RTDI, Chris Herschend, and HFE's conduct described in paragraphs 3.11 and 3.12 also
16 occurred in trade or commerce, affected the public interest, and proximately caused injury to
17 RTDS's business and property.

18 3.15 Chris Herschend and HFE are individually liable for their direct participation in
19 the conduct, knowingly approving the conduct, and for standing in responsible relation to a
20 public danger.

21 IV. RELIEF REQUESTED

22 4.1 CPA Damages: Plaintiff claims and requests all injury, harm, and damages,
23 including attorney fees and treble damages, for violation of Washington Consumer Protection
24 Act, RCW 19.86.
25

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Act Buchanan

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